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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,836	12/18/2001	Tong Sun	KCC-14,900	4247

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/22/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,836

Applicant(s)

SUN ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3761

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:

- Reference characters "15" and "20" have both been used to designate a body side liner
- Reference characters "12" and "30" have both been used to designate an outer cover

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference characters "12" and "15" are not shown in the figure. A

Art Unit: 3761

proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Reference characters "26", "28" and "38" have not been mentioned in the description. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24 – 28, 30, 32 – 35, 39– 40, 43 – 45, and 52 – 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan (EP 0 311 344).

Regarding claim 24, the examiner notes the product by process language recited in the claims. The examiner reminds the applicant that:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a

Art Unit: 3761

product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Jordan discloses an absorbent article comprising an odor control system including cellulose fibers bonded with a partially neutralized carboxylic acid odor control agent, the absorbent article being capable of suppressing odor from at least ammonia as set forth on page 4, line 51 to page 5, line 46.

With reference to claims 25 and 26, Jordan discloses an absorbent article wherein the cellulose fibers are treated with partially neutralized citric acid as set forth on page 3, lines 41 – 44 and page 5, lines 27 – 31.

Regarding claims 27 – 28, 30 and 32 – 35, see page 2, lines 5 – 6.

With respect to claims 39 and 40, Jordan discloses an absorbent article wherein the partially neutralized carboxylic acid odor control agent comprises a partially neutralized polycarboxylic acid as set forth on page 5, lines 36 – 39.

As to claims 43 – 45, Jordan discloses the claimed degree of neutralization as set forth on page 5, lines 51 – 53.

Art Unit: 3761

With reference to claim 52, Jordan discloses an article further comprising cellulose fibers which are not treated with the partially neutralized carboxylic acid odor control agent as set forth on page 4, lines 26 – 27.

Regarding claim 53, Jordan discloses the article further comprising superabsorbent material as set forth on page 2, lines 53 – 54.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29, 31, 36 – 38, 41 – 42 and 49 – 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan (EP 0 311 344).

The difference between Jordan and claim 29 is the provision that the absorbent article is swimwear.

It would have been obvious to one of ordinary skill in the art to include swim wear within the scope of the Jordan invention because Jordan discloses the invention as it relates to disposable absorbent articles (col. 2, line 5) which is well known in the art to include all types of personal care absorbent products including swim wear.

As to claims 31 and 36 – 38, see the rejection of claim 29.

The difference between Jordan and claims 41 – 42 is the amount of partially neutralized hydroxyl multi-carboxylic acid contained in the odor control agent.

It would have been obvious to one of ordinary skill in the art to modify the amount of partially neutralized hydroxyl multi-carboxylic acid contained in the odor control agent since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Regarding claims 49 – 51, see the rejection of claims 41 and 42.

Claims 46 – 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan (EP 0 311 344) and further in view of Trinh et al. (US 5,874,070)

The difference between Jordan and claim 46 is the provision that the odor control agent comprises a chelating agent.

Trinh et al. (hereinafter “Trinh”) teaches an odor control agent further comprising a chelating agent as set forth in col. 9, lines 50 – 54.

It would have been obvious to one of ordinary skill in the art to modify the odor control agent of Jordan to include a chelating agent because the addition of the chelating agent would enhance the activity of the antimicrobial agent as taught by Trinh in col. 9, lines 50 – 54.

With reference to claims 47 and 48, Trinh teaches the odor control agent comprising zinc salts as set forth in col. 8, lines 44 – 46.


Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
October 18, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700